

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Terminals LLC for Expedited, *Ex Parte* Authorization to Remove and Dispose of Certain Oil Storage and Transportation Facilities and Properties Pursuant to Pub. Util. Code § 851.

Application 04-06-015
(Filed June 10, 2004)

**OPINION DISMISSING APPLICATION
OF PACIFIC TERMINALS LLC****Summary**

Today's decision grants the unopposed motion of Pacific Terminals LLC (PT) to dismiss Application 04-06-015 (Application), as amended by the First and Second Amendments to the Application, on the grounds that Commission authorization is not required under Pub. Util. Code § 851¹ for the removal and disposal of facilities not necessary or useful in the performance of PT duties to the public.

Background

PT filed the Application on June 10, 2004, requesting expedited ex parte, authorization to remove and dispose of certain fuel oil pipeline storage and

¹ All references are to the Public Utilities Code unless otherwise noted.

transportation facilities (FOP Facilities)² PT also moved for a protective order to prevent public disclosure of certain confidential information.³

PT acquired the FOP Facilities from Southern California Edison Company in July 2003, as well as other assets used for commercial oil storage and transport for third parties.⁴ The FOP Facilities acquired by PT include tanks and ancillary facilities located near Edison's Etiwanda generating station (Etiwanda Facility), and various pump stations and facilities at Alnor, Euclid, Tonner and Santa Fe Springs used exclusively for delivery of fuel oil to Edison's Etiwanda generating plant.⁵ The FOP Facilities were originally used by Edison to deliver and store fuel oil in connection with Edison's power generation activities. In 1994 the Commission authorized Edison to use the FOP Facilities for storage and distribution of black oil and other products for third party customers.⁶ This business was operated by the Edison Pipeline and Terminals Company (EPTC). However, during the ten years that EPTC operated the FOP Facilities, and during the two years that PT owned the facilities, no third party has used the FOP Facilities for oil storage or distribution.⁷ Although Edison only used the FOP

² Paramount Petroleum Corporation filed An Opposition to PT's expedited ex parte Authorization requesting that Paramount be allowed to have 30 days to review and determine whether it should file a protest of the Application. As PT's motion for expedited ex parte Authorization is denied, Paramount was granted the 30 day period for review. No protest to PT's Application was received from Paramount.

³ An Assigned Administrative Law Judge's (ALJ) Ruling on July 22, 2004, granted PT's Motion for a Protective Order.

⁴ The Commission approved the sale in Decision (D.) 03-07-031, dated July 10, 2003.

⁵ The Etiwanda generating station was subsequently sold to Reliant Energy Corporation, and Etiwanda currently relies on natural gas for fuel.

⁶ See, D.94-10-044.

Facilities in connection with power generation activities, Edison insisted that these facilities be included as part of the overall sale of transport and storage facilities to PT.

PT states that after careful evaluation, it has determined that the FOP Facilities at Etiwanda, Almor, Euclid, Tonner and Santa Fe Springs are not necessary or useful for the provision of third party oil storage or distribution. PT explains that the Etiwanda Facility is a great distance from Los Angeles refining centers, and the pipeline is too small to feasibly allow oil movement from the Etiwanda tanks. As the other facilities at Alnor, Euclid, Tonner and Santa Fe Springs have no use except in conjunction with transporting oil to the Etiwanda Facility, these facilities have no use⁸.

An ALJ Ruling on August 2, 2004, requested certain environmental information in order for the Commission to fulfill its duties under the California Environmental Quality Act (CEQA) of 1970.⁹ In response to the ALJ ruling, on November 19, 2004, PT filed its First Amendment to Application providing environmental information related to the plan to remove and dispose of the facilities. On May 25, 2005, PT filed a Second Amendment to the Application providing additional environmental information, which states that the FOP Facilities have never been used by PT for black oil storage or distribution during

⁷ Second Amendment to the Application, p. 2.

⁸ A complete list of the specific facilities PT seeks to remove from public utility service is included in the Application.

⁹ Public Resources Code Section 21000 *et seq.*

PT's ownership.¹⁰ Accompanying the Second Amendment is PT's Motion to Dismiss the Application on the grounds that § 851 does not require Commission authorization to dispose of property that is not necessary or useful to the performance of a public utility's duties to the public.¹¹

Except for Paramount's Opposition to the expedited authorization, no other responses to PT's Application or motion have been received.¹²

Discussion

The Commission has held that the purpose of § 851 and related sections is to enable the Commission, before any transfer of public property is consummated, to review the transfer and to take such action, as a condition of the transfer, as the public interest may require.¹³ Our primary objective in reviewing the sale of utility property is to ensure that disposition or encumbrance of public utility property does not impair a utility's public service to customers. As the Commission has stated previously, "the relevant inquiry is whether the proposed transaction is adverse to the public interest."¹⁴ However, § 851 also provides that, "Nothing in this section shall prevent the sale, lease,

¹⁰ Pacific Terminals acquired the Facilities (120 miles of oil pipeline, 50 oil storage tanks, and 11 heating and pumping stations) from Southern California Edison Company on July 31, 2003.

¹¹ Attached to PT's Motion is the Declaration of Arthur Diefenbach, Senior Vice President, West Coast Business Unit, of Pacific Energy Management LLC, the managing partner of Pacific Energy Partners, L.P., the parent company of PT. The Declaration states that PT has not used the FOP Facilities for third party oil storage or transportation since acquiring the facilities in July 2003.

¹² Paramount did not subsequently protest the Application.

¹³ *San Jose Water Company*, 10 CRC 56 (1916), pp. 62-63.

¹⁴ *Universal Marine Corporation*, 14 CPUC 2d 644, 646 (1984).

encumbrance or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public.” The threshold issue to be decided is whether the property in question is “necessary or useful.” If it is not, § 851 does not apply.

First, we note that PT has not used the FOP Facilities since acquiring the facilities from Edison. Although PT purchased the FOP Facilities as part of a larger purchase of oil transportation and storage facilities, the remote location and air pollution prohibitions against burning black oil render the FOP Facilities unusable for their intended purpose. Second, the pumping and heating facilities at Euclid, Tonner, Santa Fe Springs and Alnor only serve the Etiwanda oil storage facilities, and therefore are not separable for other public utility purposes. Third, as noted by the Declaration of Arthur Diefenbach, the facilities have never been used for the intended public utility purpose of oil storage and distribution. Furthermore, the facilities have not been used for oil storage or distribution for over a decade. Thus, the facilities have no current use as public utility property. Fourth, no one else will be able to use the FOP Facilities for public utility purposes as their removal and disposal will render the facilities useless for public utility purposes¹⁵ After review of these facts, it is apparent that the FOP Facilities are not necessary or useful to the performance of PT duties to the public, currently or in the future. As such, their sale would not impact PT’s ability to provide service.

¹⁵ As explained in the Application, PT seeks authorization to remove and dispose of the oil storage tanks, remove and cap subsurface piping, and remove and dismantle all other FOP Facilities.

Although the FOP Facilities are not useful for current or future utility purposes, we also consider whether there is need to address any ratemaking, accounting or environmental consequences presented by Application. We note that the ratemaking and accounting matters are not applicable in this instance as D.03-07-031 approving the sale, did not establish any rate base upon which to determine gains or losses on the sale of the facilities. Furthermore, PT establishes its charges according to contracts, and there are no reportable earnings upon which to determine losses or gains.¹⁶

Finally, as we are dismissing the Application, environmental reviews under the CEQA are not required. However, we note that in response to the ALJ's Ruling, PT amended its Application providing ample information demonstrating that the cities and counties in which the FOP Facilities are located will provide responsible environmental oversight.

Conclusion

For all of the foregoing reasons, PT's Application for removal and disposal of the FOP Facilities is not required under § 851, and we grant PT's Motion to dismiss the Application.

Final Categorization and Waive of Review Period

Based on our review of this application, we conclude that there is no need to alter the preliminary determinations as to categorization and need for a hearing, made in Resolution ALJ 176- 3136 (July 8, 2004). Moreover, since we are granting PT's Motion to dismiss the Application, the relief it now requests from this Commission, there is no need for public review and comment.

¹⁶ See, Ordering Paragraph 8, D.03-07-035, p. 52.

Assignment of Proceeding

John Bohn is the Assigned Commissioner and Bruce DeBerry is the assigned ALJ in this proceeding.

Findings of Fact

1. PT acquired the FOP Facilities from Edison in July 2003, as well as other assets used for commercial oil storage and transport for third parties.
2. The FOP Facilities are used exclusively for delivery of fuel oil to the Etiwanda generating station.
3. During the 10-year period that EPTC operated the FOP Facilities, and during the two year period that PT owned these facilities, no third party used the facilities for oil storage or distribution.
4. The Etiwanda storage tanks are located at a great distance from Los Angeles refining centers, and the connecting pipeline is too small to feasibly allow oil movement from the Etiwanda storage tanks.
5. The heating and pumping facilities at Alnor, Euclid, Tonner and Santa Fe Springs have no use except in conjunction with transporting oil to Etiwanda.
6. The FOP Facilities are not and have never been necessary as useful to the performance of PT's duties to the public, currently or in the future.
7. PT intends to remove and dispose of the FOP Facilities.
8. There is no rate base established upon which to determine any gains or losses from the sale of the FOP Facilities.
9. As PT establishes its charges for the FOP Facilities through contracts, there are no reportable earnings upon which to determine gains or losses.
10. There are no protests to PT's Application, and its motion to dismiss is uncontested.

Conclusions of Law

1. The purpose of § 851 and related sections is to enable the Commission to review the transfer of public property before the transfer is consummated, and take such action as a condition of the transfer, as the public interest may require.

2. Nothing in § 851 prevents the sale, lease, encumbrance or other disposition of any property which is not necessary or useful in the performance of duties to the public.

3. PT's Motion to dismiss the Application should be granted.

4. PT's Motion for expedited ex parte authorization is moot.

O R D E R

IT IS ORDERED that:

1. Pacific Terminal LLC's Application to Remove and Dispose of Certain Oil Storage and Transportation Facilities and Properties is dismissed.

2. Application 04-06-015 is closed.

This order is effective today.

Dated _____, at San Francisco, California.